

Department of Defense

217.173

(3) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic lot purchases and more efficient production rates).

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) A multiyear contract for supplies may be used if, in addition to the conditions listed in FAR 17.105-1(b), the use of such a contract will promote the national security of the United States.

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before the contracting officer awards a multiyear contract including an unfunded contingent liability in excess of \$20 million (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(d) Agencies shall establish reporting procedures to meet the requirements of paragraph (c) of this section. Submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

217.173 Multiyear contracts for weapon systems.

(a) As authorized by 10 U.S.C. 2306b(a) and subject to the conditions in paragraph (b) of this section, the head of the agency may enter into a multiyear contract for—

(1) A weapon system and associated items, services, and logistics support for a weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see

217.174 regarding economic order quantity procurement).

(b) The following conditions must be satisfied before a multiyear contract may be awarded under the authority described in paragraph (a) of this section:

(1) The multiyear exhibits required by DoD 7000.14-R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)). Information supporting this certification shall be submitted to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(3) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B)). Information supporting the agency's determination that this requirement has been met shall be submitted to USD(C)(P/B) with the information supporting the certification required by paragraph (b)(2) of this section.

(4) If the value of the multiyear contract exceeds \$500,000,000, the applicable Defense appropriations act specifically provides that a multiyear contract may be used to procure the particular system or system component (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(5) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the

law's specific savings requirement. The request shall—

- (i) Quantify the savings that can be achieved;
- (ii) Explain any other benefits to the Government of using the multiyear contract;
- (iii) Include details regarding the negotiated contract terms and conditions; and
- (iv) Be submitted to OUSD(A&T)DP for transmission to Congress via the Secretary of Defense and the President (10 U.S.C. 2306b(i)(2)).

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before awarding—

- (1) A multiyear contract providing for economic order quantity purchases in excess of \$20 million in any year; or
- (2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any year (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(b) Before initiating an advance procurement, the contracting officer shall verify that it is consistent with DoD policy (e.g., Part 3 of DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14-R, Financial Management Regulation).

Subpart 217.2—Options

217.202 Use of options.

- (1) Options may be used for foreign military sales requirements.
- (2) Consider use of surge options to support the Industrial Preparedness Production Planning program (see subpart 208.72). A surge option allows the Government, prior to final delivery, to—
 - (i) Accelerate the contractor's production rate in accordance with a surge

production plan or a delivery schedule provided by the contractor under the terms of the contract; and

(ii) Purchase additional quantities of supplies or services.

(3) See subpart 217.74 for limitations on the use of undefinitized options.

[56 FR 36345, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996]

217.207 Exercise of options.

(c) Except for contracts for the acquisition of commercial items, if the contractor has any contract containing the clause at FAR 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, the contracting officer may exercise an option with a value exceeding the simplified acquisition threshold only after determining that the contractor has submitted the most recent report required by that clause (see 222.1304(b)).

[63 FR 11851, Mar. 11, 1998]

217.208 Solicitation provisions and contract clauses.

Sealed bid solicitations shall not include provisions for evaluations of options unless the contracting officer determines that there is a reasonable likelihood that the options will be exercised (10 U.S.C. 2301(a)(7)). This limitation also applies to sealed bid solicitations for the contracts excluded by FAR 17.200.

217.208-70 Additional clauses.

(a) Use the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, when an option may be used for foreign military sale requirements.

(1) Use Alternate I when the foreign military sale country is not known at the time of solicitation or award.

(2) Do not use this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(b) When a surge option is needed in support of industrial preparedness production planning (see subpart 208.72), use the clause at 252.217-7001, Surge Option, in solicitations and contracts.